**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an appeal by way of stated Case on a question of law for the opinion of the Court of Appeal under and in terms of Section 11A of the Tax Appeals Commission Act No 23 of 2011 (as amended)

**CA Case No: CA/TAX/11/2014**

**Tax Appeals Commission No: TAC/VAT/003/2012**

Brooky Diamond (Private) Limited,
Spur Road 2, Phase 1,
EPZ, Katunayake.

**Appellant**

**Vs.**

Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sri Chittampalam A Gardiner Mawatha,
Colombo 12.

**Respondent**

**Before :** **D.N Samarakoon, J**
**B. Sasi Mahendran, J**

**Counsel :** Sumudu Dissanayake for the Appellant
Manohara Jayasinghe ,SSC with Amasara Gajadeera, SC for the Respondent

**Written Submissions :** Appellant On 08.06.2022
Respondent On 08.06.2022

**Decided On :** 27.06.2022

**B. Sasi Mahendran, J**

This is a "Case Stated" for the opinion of the Court of Appeal by the Tax Appeals Commission against the determination of the Tax Appeals Commission dated 28th January 2014 confirming the determination made by the Commissioner General of Inland Revenue dismissing the appeal of the Appellant, Brooky Diamond (Pvt) Ltd.

The Appellant is a limited liability company approved by the Board of Investment of Sri Lanka since 30th March 1998 to engage in sawing and polishing diamonds for re-export. The transaction on which this dispute arose concerns diamonds sent by Grossman Diamond Manufacturing, situated in Belgium, to Colandiam (Pvt) Ltd., another company in Sri Lanka approved by the Board of Investment of Sri Lanka, to do sawing and polishing services. Colandiam forwards the diamonds to Brooky Diamond for the purpose of sawing.

The Assessor refused to accept the Value Added Tax (VAT) returns submitted by the Appellant for the taxable period (01st April 2005 to 31St January 2009- forty-six months) on the basis that the Appellant is liable to pay VAT on the sawing services it provided locally to Colandiam.

This Court will first determine the main issues which are whether sawing services rendered by Brooky Diamond to Grossman Diamond are entitled to zero-rate of tax and the issue of compliance with Section 29 of the Value Added Tax Act. Thereafter, it will set out its opinion in respect of the eighteen questions of law transmitted by the Tax Appeals Commission.

## 1. Entitlement to 'zero-rate' in terms of Section 7(1)(c) of the Value Added Tax Act.

Taxable goods or services supplied in Sri Lanka and consumed or utilized outside Sri Lanka by persons outside Sri Lanka are eligible to VAT at zero rate of tax. Section 7(2) of the Value Added Tax Act No. 14 of 2002, as amended, provides that no tax shall be charged in respect of such supply and the supply shall in all other respects be treated as a taxable supply, and accordingly the rate at which tax is charged on the supply shall be zero.

The Appellant vehemently sought to claim this benefit by bringing itself within Section 7(1)(c) of the Act. This Section reads,

*7. (1) A supply of –*

*(a) …….*

*(b) …….*

*(c) any other service, being a service not referred to in paragraph (b), provided by any person in Sri Lanka to another person outside Sri Lanka to be consumed or utilized outside Sri Lanka shall be zero rated provided that payment for such service in full has been received in foreign currency from outside Sri Lanka through a bank in Sri Lanka.*

I would like to briefly re-visit the facts of this case prior to determining the applicability of the Section. This is a case concerning diamonds sent by Grossman Diamond from Belgium to be sawed and polished by Colandiam in Sri Lanka. Colandiam then forwards the diamonds to Brooky Diamond to be sawed. Once sawing process is completed the diamonds are sent back to Colandiam for polishing, which are then finally re-exported to Belgium. Brooky Diamond sends an invoice to Colandiam for the sawing services, for which Colandiam remits the payment in US dollars to Brooky Diamond's bank account.

In terms of this Section, a fourfold criterion must be established in order to claim the benefit of zero-rating. In a legal opinion dated 11th May 2012, tendered by the late Mr. Shibly Aziz President's Counsel, on whether the Appellant's sawing services are zero-rated in terms of Section 7(1)(c) the learned President's Counsel analysed the Section in this manner as well.

The fourfold criterion is as follows:

**(i) By whom the service is provided**
**(ii) To whom the service is provided**
**(iii) How the service is to be provided**
**(iv) How should the service be paid for.**

**(i) By whom the service is provided**

The first step is satisfying that the service is provided by a person from Sri Lanka. In terms of Section 9 of the Act, services are deemed to be supplied in Sri Lanka where the supplier carries on or carries out a taxable activity in Sri Lanka and the services are performed in Sri Lanka **by the supplier or his agent.** Relying on Section 9 it was contended that a person supplying services in Sri Lanka can do so either in the capacity of a supplier of the service or as an agent of the supplier.

On this footing, the Appellant sought to argue that it was supplying the services of diamond sawing as an agent of Colandiam to Grossman Diamond. A letter dated 26th March 2012 from the Managing Director of Colandiam to the Commissioner General of Inland Revenue and an affidavit of the Managing Director of the Appellant which state that the Appellant is rendering services as the agent of Colandiam for the sawing of raw diamonds were submitted as evidence that there, in fact, existed an agency relationship between the Appellant and Colandiam.

However, these two documents are insufficient to establish an agency relationship. They appear to be a mere afterthought or an ex post facto justification to satisfy the first step in the aforementioned criterion. As the Tax Appeals Commission has observed as well, there is no formal contract or any written documentation to prove that there existed an agency relationship.

This Court too observes that the Appellant has not submitted any documentation to show its dealings with Grossman, prior to the issue cropping up.

The existence of an agency relationship was also sought to be established by reference to the tests for identifying a contract for services vis-à-vis a contract of services; It was argued that the "economic reality" test adopted by the US Supreme Court in the case of US v. Silk, (1946) 331 US 704, and the "integration test" propounded by Lord Denning in Stevenson, Jordan & Harrison v. Macdonald (1952) 1 TLR 101, support the contention that the Appellant is in a contract of service to Colandiam qua agent. In terms of "economic reality", it was argued that, as the entire sawing capabilities of Colandiam were exclusively transferred to the Appellant, with the requisite approval of the Board of Investment of Sri Lanka which stipulated certain conditions such as absorbing employees of Colandiam under the same terms of service they enjoyed at Colandiam, it evinced a continuation and extension of Colandiam's sawing services and an authorisation of the Appellant to act in place of Colandiam in providing sawing services to Grossman. Further,

in terms of the "integral test", sawing being an integral prerequisite for polishing, the Appellant is said to be an integral part of Colandiam's business.

It must also be noted that the Appellant company, was not incorporated for this purpose alone. It was incorporated on 19th February 1998. The primary object of the Appellant according to the Memorandum of Association is to "undertake sawing, cutting, polishing of diamonds and other precious stones and semi precious stones". It was only on the 22nd of November 2010 that the Appellant was awarded the subcontract (per the document titled 'Application for Approval to Award a Subcontract' Form 45/FO/15/06) The Appellant was engaged in supplying its services not only to Colandiam. For whatever reason Colandiam gave their machinery to the Appellant.

In contrast to the Appellant's contention, referring to the same as a misunderstanding of the law of agency, the Respondent contends that the arrangement between Colandiam and the Appellant is in fact an arrangement whereby Colandiam "outsourced" the service of sawing diamonds to the Appellant.

Agency, as defined by G.H.L. Fridman in 'Law of Agency' 7th Edition, is,

"The relationship that exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal,* in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property."

Bowstead and Reynolds on Agency 21st Edition define agency as,

"The fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should represent him or act on his behalf and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. or so to act……In respect of the acts to which the principal assents, the agent is said to have authority to act; and his authority constitutes a power to affect the principal's legal relations with third parties…."

North, Cowdroy, and Katzmann JJ. in a joint judgment in Alliance Craton Explorer Pty Ltd v. Quasar Resources Pty Ltd [2013] FCAFC 29 held,

*"Agency" in law connotes "an authority or capacity in one person to create legal relations between a person occupying the position principal and third parties" International*

*Harvester Company of Australia Proprietary Limited v Carrigan's Hazeldene Pastoral Company (1958) 100 CLR 644 at 652. Cf. Peterson v Maloney* (1951) 84 CLR 91 at 94:

The legal conception of agency is expressed in the maxim "Qui facit per alium facit per se", and an "agent" is a person who is able, by virtue of authority conferred upon him, to create or affect legal rights and duties as between another person, who is called his principal, and third parties."

Agency was more widely defined by Lord Woolf in Customs and Excise Commissioners v. Johnson [1980] STC 624. Lord Woolf, alluding to Bowstead and Reynolds on Agency, held, "The relationship which exists between two persons, one of whom expressly or impliedly consents that the other should represent him or act on his behalf and the other of whom similarly consents to represent the former or so to act". Lord Woolf observed that the wider definition is not dependent on affecting legal relationships with third parties.

In Halsbury's Laws of England (5th Edition) it is noted that "The word "agent" is also frequently used to describe the position of a person who is employed by another to perform duties often of a technical or professional nature which he discharges as that other's alter ego and not merely as an intermediary between the principal and the third party."

The Appellant has been unable to prove to the satisfaction of this Court the existence of an agency relationship in the narrow sense (an authority or capacity in one person to create legal relations between a person occupying the position of a principal and third parties) or in the broader sense (an authority in one person to act on behalf of a principal in respect of some particular act or matter).

It is seen that the Appellant has not had any direct dealings with Grossman Diamond on behalf of Colandiam. We find ourselves in agreement with the submission of the learned State Counsel that what appears from the facts of the case is the reverse contention of the Appellant. That is to say, Colandiam entered into a legal relationship with Grossman Diamonds on behalf of the Appellant, as the agent of the Appellant and not as the Appellant argues, the Appellant being the agent of Colandiam.

When Colandiam received raw diamonds from Grossman Diamond, it would supply them to the Appellant for sawing. Once sawing is completed it is sent back to

Colandiam for polishing, following which it is exported to Grossman. The Appellant's Foreign Currency Banking Unit (FCBU) account would be credited in a sum of US dollars by Colandiam for the services performed.

Further evidence of the nature of the relationship that existed between the Appellant and Colandiam is the document titled "Application for approval to award a subcontract", under which the Board of Investment has approved the awarding of the sub-contract to the Appellant by Colandium for the purpose of sawing diamonds.

As Bowstead and Reynolds observe, "The mere fact that one person undertakes work at the other's request and for his benefit is insufficient to establish agency".

We are of the view that this was an arms' length relationship between commercial parties. The agency relationship was a mere artificial construct to claim the benefit of zero-rating.

Even if it is accepted that the Appellant is considered an agent, the Appellant must satisfy the other three tests.

**(ii) To whom the service is provided**

In terms of the Section, the service must be provided to a person who is outside Sri Lanka.

**(iii) How the service is to be provided**

The service must be "consumed or utilized outside Sri Lanka".

There is no dispute that the sawing service is provided in respect of diamonds sent by Grossman Diamond, which is located in Belgium, to Colandiam. It is stated that the diamonds once sawed by the Appellant and then polished by Colandiam are reexported to Belgium. Thus, it is consumed or used outside of Sri Lanka, for the purposes of the Section.

**(iv) How should the service be paid for.**

R elying on the aforesaid legal opinion, it was the contention of the Appellant that since Section 7(1)(c) does not stipulate that the remittance must be from a foreign bank and paid directly by the recipient of services to the provider of the same, it would suffice

that fees for the performance of the service be in foreign currency which is generated from a source outside Sri Lanka as opposed to being foreign currency purchased in Sri Lanka. On this basis, the remittance to the Appellant's bank account is a remittance in foreign exchange from abroad as Colandiam accepts the payment from Grossman Diamond as a conduit to effect payment to the Appellant, who is paid the fees in US dollars.

We are unable to agree with this interpretation of the Section. The relevant part of the Section reads:

"…. provided that payment for such service in full has been received in foreign currency from outside Sri Lanka through a bank in Sri Lanka"

In Cape Brandy Syndicate v. Inland Revenue Commissioners, (1921) 1 KB 64, Rowlatt J. famously said in taxing statutes:

*"... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used"*

Thus, in reading this Section, we are guided by the established rule of interpretation that taxing statutes must be strictly construed.

On a strict construction, the Appellant's contention that it is sufficient if the origin of the foreign currency must be from aboard and remitted into a local bank cannot be accepted. There must be a clear link to establish that the payment in foreign currency for the service supplied has been received from the person outside Sri Lanka to the person supplying the same in Sri Lanka through formal banking channels.

There is no material before this Court to determine whether the sum of US dollars paid to the Appellant was the same sum of money paid by Grossman Diamond to Colandiam. It is true that a sum of money in US dollars was credited to the FCBU account of the Appellant by Colandium in respect of the sawing services, however, there is a doubt whether the payment is from money paid to Colandiam by Grossman Diamond.

A liberal interpretation of the provision, such as the one offered by the Appellant, cannot be accepted because it would have the effect of legitimising informal methods of remitting money into the Country such as 'undial' or 'hawala' through which foreign currency may be received causing a loss to the state coffers.

Moreover, an interpretation that would enable informal methods of remitting money cannot be permitted, especially now, at a time when Sri Lanka is faced with a severe economic crisis. The negative impact on vital sectors due to a lack of foreign currency and the loss of government tax income due to informal transactions will only add to the woes of the country.

The Tax Appeals Commission, in its determination, made a pertinent observation that, "As Colandiam (Pvt.) Ltd. is the final exporter…. it enjoys the zero rating facility and therefore, it is to be noted that zero rating facility cannot be granted in respect of two registered suppliers in respect of the same export."

This raises the question, for which there is no material before this Court to determine, whether Colandiam has claimed the entire benefit of zero-rating? Or whether Colandiam has claimed the benefit only for the services it supplied in regard to polishing diamonds? If the Appellant is entitled to zero-rating, in the absence of this information, that would give rise to unjust enrichment or a windfall in respect of the savings made from zero-rating.

The burden of proof is on the Appellant, seeking the benefit of zero-rating in terms of Section 7(1)(c) of the VAT Act, to satisfy this Court that it comes within the parameters of this Section. Clear proof must be adduced by the Assessee to avail the benefit of a tax exemption as the facts and figures are known to the Assessee.

This position is buttressed by Section 103 of the Evidence Ordinance which stipulates that the burden of proof as to any particular fact lies on the person who wants the court to believe in its existence.

In the recent case of Peoples' Leasing and Finance PLC v. Commissioner General of Inland Revenue, CA TAX 0021/2019 decided on 20.07.2021, his Lordship Dr. Ruwan Fernando J. held,

*"It is to be noted that the burden of proving that an assessment is excessive or erroneous is on the assessee who is objecting to the assessment and, thus, if the person assessed fails to prove that the assessment is excessive or wrong, the assessment will be affirmed in appeal"*

A recent five judge bench of the Indian Supreme Court in Commissioner of Customs v. Dilip Kumar (2018) 9 SCC 1, observed,

*"A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification…… the burden of proving applicability* would be on the assessee to show that his case comes within the parameters of the exemption clause."

The judgment of Novopan India Ltd v. Collector of Central Excise and Customs 1994 Supp (3) SCC 606, cited in Dilip Kumar (supra) unanimously held,

*"A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision."*

Thus, we are of the view for the foregoing reasons, the Appellant is not entitled to claim the benefit of zero-rating.

## 2. Non- Compliance with Section 29 of the Act

The Appellant contends that the letter of intimation dated 23rd December 2009 bearing the frank of one M.T.P. Wimalasena, Assessor, Unit 15, is devoid of reasons to justify refusal to accept the Appellant's return. Relying on the principle of New Portman v. Jayawardane, Sri Lanka Tax Cases Vol IV 236, in which the reason given was held to be only a conclusion and not a reason per se, the Appellant contends that the Assessor has not provided reasons, sufficient to discharge the statutory duty imposed by Section 29 of the VAT Act to justify rejection of the return.

Section 29 of VAT Act imposes a duty on an Assessor rejecting a return to communicate why it was rejected. This Section reads,

*Where an Assessor* ***does not accept a return*** *furnished person under section 21 for any taxable period and makes an assessment or an additional assessment on such person for such taxable period under section 28 or under section 31, as the case may be, the Assessor* ***shall communicate*** *to such person by registered letter sent through the post* ***why he is not accepting the return****.* [emphasis added]

The adequacy or sufficiency of reasons to discharge this statutory burden then has to be judged in the circumstances of the case. A useful judgment in this regard is the case of E D Gunaratna v Jayawardane, Sri Lanka Tax Cases Vol. IV 246. In that case, informing the Assessee that his income from lorries has not been declared was held to be

adequate and intelligible to enable him to formulate his grounds of appeal as "a clue is given to the Petitioner as to where he had gone wrong in his return".

One main reason for the insistence of reasons is therefore to enable the aggrieved party to mount an effective attack on the decision so that one's right of appeal would not be rendered nugatory. This view was echoed by his Lordship Sharvananda J. (as he then was) in D.M.S. Fernando v. A.M. Ismail Sri Lanka Tax Cases Vol IV 184, "so as to enable him [the Assessee] to demonstrate the untenability of the said reasons at the hearing of any appeal that may be preferred by him against the assessment".

Further, in the often-cited judgment of his Lordship Samarakoon C.J. in the case of D.M.S. Fernando (supra) the rationale underlying giving reasons for refusal of a return was clearly explained.

**"The primary purpose of the amending legislation is to ensure that the Assessor will bring his mind to bear on the return and come to a definite determination whether or not to accept it**. It was intended to prevent arbitrary and grossly unfair assessments which many Assessors had been making as " a protective measure". An unfortunate practice had developed where some Assessors, due to pressure of work and other reasons, tended to delay looking at a return till the last moment and then without a proper scrutiny of the return, made a grossly exaggerated assessment……. Under the amendment when an Assessor does not accept a return, it must mean that at the relevant point of time **he has brought his mind to bear on the return and has come to a decision on rejecting the return. Consequent to this rejection, the reasons must be communicated to the Assessee.**" [emphasis added]

The body of said letter of intimation reads,

"With reference to the Value Added Tax returns submitted and output schedules submitted. When observing the schedules supplied for output tax for above taxable periods, it was revealed that you are liable to pay VAT on **local supply**.

Therefore the returns submitted for above taxable periods cannot be accepted, and your additional VAT liability is calculated as follows…" [emphasis added]

The Assessor was of the opinion that the Appellant is liable to pay Value Added Tax on the **value of local services** provided by the Appellant to a local company, namely

Colandiam (Pvt) Ltd in terms of the VAT Act at the rate of 15%. This is made clearer by the insertion of the intended tax computation made based on local supplies.

The reasons then have enabled the Appellant to mount an effective attack on the assessment, as it has done. It also evinces the fact that the Assessor has brought his mind to bear on the return and come to a decision to reject it.

We are of the view that the Assessor has communicated his reasons for refusal in a manner adequate or sufficient to discharge the duty imposed on him and has thereby acted in compliance with Section 29 of the Act.

In the light of the aforesaid reasoning this Court will now determine the eighteen questions of law as follows:

1. Was the determination of the Tax Appeals Commission that there was compliance in the instant case with Section 29 of the Value Added Tax Act, No. 14 of 2002 as amended (hereafter sometimes referred to as the 'VAT Act') erroneous and not in accordance with the law?

   The Determination of the Tax Appeals Commission that the Assessor complied with Section 29 is correct.

2. If there was no compliance with Section 29 of the Value Added Tax Act, No. 14 of 2002, were the assessments of the Commissioner General of Inland Revenue and/or Assessor, which were the subject matter of the instant case, void and/ or unenforceable in law?

   This question does not arise, in view of the answer to the previous question.

3. Was the Determination of the Tax Appeals Commission in accepting assessments made by the Assessor and the Commissioner General of Inland Revenue which were based on data obtained from the Department of Customs, referred to as 'Customs data', legally flawed and/or not in accordance with the VAT Act?

No. A correct determination, based on the Schedules and information provided by the Appellant has been made by the Assessor that the Appellant engaged in supplying services locally.

4. Had the Tax Appeals Commission misdirected itself in law and in fact by failing to consider that the Commissioner General of Inland Revenue and/or the Assessor had failed to establish a proper and valid basis for the determination of the value of the services rendered by the Appellant in terms of the VAT Act?

   No. For the aforementioned reasons.

5. In all the circumstances of this matter and in law were the fresh assessments issued in this case, being based on incorrect and/ or unsubstantiated figures, not in accordance with law, and are erroneous and liable to be struck down in terms of the law.?

   No.

6. Was the determination of the Tax Appeals Commission that the Appellant was not entitled to ' Zero-rate' in terms of Section 7(1) (c) of the VAT Act, the value of the services rendered in respect of the sawing of diamonds in the instant case, flawed in law and not in accordance with the VAT Act, in as much as the Appellant was performing such services as an agent of Colandium (Pvt.) Limited?

   No. The Appellant is not entitled to be zero rated. As the Appellant has failed to establish that fact.

7. In any event, was the Appellant entitled to "Zero Rate" in terms of Section 7(1) (c ) of the VAT Act in respect of the sawing services rendered in the instant case and had the Tax Appeals Commissions misdirected itself in law and fact by failing to so determine?

   No.

8. Did the Tax Appeals Commissions err in law by determining that the services rendered by the Appellant in sawing diamonds that were exported by Colandiam (Pvt.), Ltd, could not be zero-rated in terms of the VAT Act?

   No.

9. Was the business of Appellant only liable to VAT at zero percent in respect of services by the Appellant for the services of sawing diamonds for foreign customers and therefore was the Appellant not liable to pay VAT as stipulated in Section (7 ) (1) (c ) of the VAT Act?

   Since he is not qualified under Section 7(1)(c) of the Act the Appellant is liable to pay VAT at the applicable rate.

10. Has the Tax Appeals Commission erred/ and/or misdirected itself , in law, by failing to consider the evidence produced by the Appellant establishing that the Appellant it an agent of Colandium (Pvt.) Ltd.?

    No.

11. Has the Tax Appeals Commission erred in law by failing to determine that the Appellant is an agent of Colandium?

    No.

12. Has the Tax Appeals Commission erred and/or misdirected itself, in law in failing to consider that whether there is an agency relationship between the Appellant and Colandium (Pvt.) Ltd., is a critical matter in the instant case?

    No.

13. (a) Has the Tax Appeals Commission erred and/or misdirected itself in Law by failing to consider that the Appellant could ( If the Tax Appeals Commission was rejecting the contention that the Appellant was an agent) in law be entitled for

zero rating for its services in sawing diamonds as it was providing such services to a company which is based abroad for which the Appellant was paid in foreign exchange thought invoice raised by the Appellant?
No.

(b) Has the Tax Appeals Commission erred in law by failing to consider that since the diamonds sawed by the Appellant were consumed and/or used by a company based in Belgium called Grossman Diamond Manufacturing, the Appellant has satisfied the requirement for zero-rating in terms of the VAT Act that the service must be provided by a person in Sri Lanka to a person outside Sri Lanka to be consumed and/or utilized outside Sri Lanka?

The Appellant has not satisfied the requirement for zero-rating.

14. In all circumstances of this matter and in the light of the material produced before the Tax Appeals Commission and in law, was the Appellant entitled to be zero-rated in respect of the services rendered by the Appellant in terms of the Vat Act?

No.

15. Did the Tax Appeals Commission err in law by accepting that the Assessor and/or Commissioner General of Inland Revenue in determining that the failure of the Appellant to obtain approval from the Board of Investment to enter into sub-contract with local companies meant that the services provided by the Appellant were services rendered by the Appellant to a local company called Colandiam Pvt. Ltd.?

The services rendered by the Appellant were rendered to Colandiam, in the capacity of a subcontractor.

16. Did the Tax Appeals Commission misdirect itself in law in determining that the basis of the Appellant's contention that its services in sawing diamonds for export by Colandium Pvt. Ltd. is zero-rated for Value Added Tax in terms of the VAT Act was because the Appellant was exempt from income tax under the agreement entered into it by the Board of Investment?

The Appellant's service is not entitled to be zero-rated for the aforementioned reasons.

17. Did the Tax Appeals Commission err in law by accepting the determination of the Assessor and/or Commissioner General of Inland Revenue that the value of services provided by the Appellant to Colandium (Pvt.) Ltd. is the 'Value of local supplies' that should be used for assessing the Value Added Tax liability of the Appellant?

    No.

18. Were the assessment which were the subject matter of the appeal before the Commission made after the expiry of 2 years from the end of the relevant taxable periods in respect of which the returns had been furnished for the years of assessment 2005/2006, 2006/2007, 2007/2008 and hence invalid and have no force in law in terms of Section 33(1) of the Value Added Tax Act?

    No.

For the foregoing reasons, this Court confirms the determination of the Tax Appeals Commission. The Registrar is directed to send a copy of this judgment to the Tax Appeals Commission.

**JUDGE OF THE COURT OF APPEAL**

**D.N. SAMARAKOON, J**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**